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September 13, 2005

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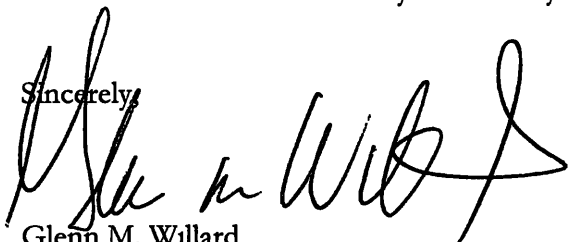
Mr. J. Cameron Thurber
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5502 (Martinez)

Dear Mr. Thurber:

Attached is *Martinez for Senate's* Response to the Factual & Legal Analysis in the above-referenced matter. Please let me know if you have any questions.

Sincerely,



Glenn M. Willard

Enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Martinez for Senate and
Charles W. Puckett in his official capacity
as treasurer.

MUR 5502

RESPONSE OF MARTINEZ FOR SENATE AND CHARLES W. PUCKETT, IN
HIS OFFICIAL CAPACITY AS TREASURER, TO THE FEDERAL ELECTION
COMMISSION'S FACTUAL AND LEGAL ANALYSIS

Martinez for Senate and Charles W. Puckett, in his official capacity as treasurer

("Respondents"), hereby respond, through counsel, to the Commission's April 19, 2005 Factual and Legal Analysis ("F&LA").

The investigation in this MUR was opened only because the Commission's content standard in 11 C.F.R. 109.21(c)(4) was met, and there appeared to be evidence that the two vendors worked for both *Bush-Cheney '04* ("B-C '04") and *Martinez for Senate*. The Commission's Explanation and Justification of the common vendor rule indicates that *merely* being a vendor shared by two candidate clients should not be reason to open a MUR to determine if the conduct standard under 11 C.F.R. § 109.21(d)(4) has been satisfied:

The final rule does not require the use of a confidentiality agreement or ethical screen because it does not presume coordination from the mere presence of a common vendor. The final rule does not dictate any specific changes to the business relationship between the vendor and its clients. The Commission does not anticipate that a person who hires a vendor and who, irrespective of BCRA's requirements, follows prudent business practices, will be inconvenienced by the final rule. [68 Fed. Reg. 437 (2003) (emphasis added).]

If specific changes between a media vendor and its clients are not dictated by the FEC's coordination rule, then an FEC enforcement action should not ensue *merely* because of the presence of common vendors. Without one strand of evidence that a vendor used or conveyed to the person paying for a communication (*Martinez for Senate* in this instance) a campaign's (i.e., B-C '04's) plans,

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projects, activities or needs (apart from such a conveyance being a theoretical possibility for all common vendors) or information used previously in providing services to candidate who is clearly identified in a communication (i.e., President Bush) in a material manner, the Commission's E & J quoted above is entirely unreliable and a resulting investigation nothing more than the proverbial "fishing expedition". The Commission might as well have categorically said in its E & J that, if there is evidence in a complaint that the effortlessly found content standard is satisfied and the first two readily found elements of the common vendor test are met, this will necessarily warrant an investigation to determine if the most critical and substantive conveyance or use element of the common vendor test has been satisfied.

- I. **There is no evidence that a vendor common to both *Martinez for Senate* and *Bush-Cheney '04* obtained inside information while working for *B-C '04* and then used it in a material or immaterial manner in *Martinez for Senate's* public communications.**

- A. **Ashley O'Connor was not a vendor to *Martinez for Senate* and the remaining Red October staff provided no creative services to *B-C '04*.**

The F&LA cites evidence that *Martinez for Senate* and *B-C '04* shared the media production services of Red October Productions. However, Ashley O'Connor, President of Red October Productions, performed no services for *Martinez for Senate*. From December 1, 2003 through November 30, 2004, Ashley O'Connor was under contract to provide media production consultation to Maverick Media, Inc., which had been retained by *B-C '04*. During the 2004 election cycle, no other principal, employee or agent of Red October provided media-related services to Maverick Media or *B-C '04*, or had access to any *B-C '04* creative materials, including materials related to the services provided by O'Connor to Maverick Media. Doug Dubin (former Executive Producer of Red October and no longer employed by it) provided only administrative services for Maverick Media, as required by Red October.

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the Commission should find no reason to believe Respondent

Martinez for Senate made an in-kind contribution to *B-C '04*.

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